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ConocoPhillips Company

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOUTAN PETROLEUM, INC.

Plaintiff,

vs.

CONOCOPHILLIPS COMPANY, a Texas
corporation and DOES 1 through 10,
Inclusive

Defendants.

Case No. 3:07-cv-5627

**DEFENDANT CONOCOPHILLIPS
COMPANY'S NOTICE OF MOTION
AND MOTION TO DISMISS PLAINTIFF
HOUTAN PETROLEUM, INC.'S
COMPLAINT**

Date: January 25, 2008

Time: 10:00 a.m.

Courtroom: 1

Before: Hon. Samuel Conti

Accompanying Document:

**Memorandum of Points and Authorities
(with Exhibit)**

TO PLAINTIFF HOUTAN PETROLEUM, INC., AND ITS ATTORNEYS OF
RECORD:


PLEASE TAKE NOTICE that on January 25, 2008, at 10:00 a.m., or as soon thereafter
as the matter may be heard by the above-entitled Court, located at 450 Golden Gate Avenue, San
Francisco, California, Defendant ConocoPhillips Company ("ConocoPhillips") will bring on for
hearing this motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil
Procedure 12(b)(6). Said motion is made on the grounds that: 1) ConocoPhillips terminated the

1 parties' franchise agreement timely and for a legitimate reason under the Petroleum Marketing
2 Practices Act (the "PMPA") and Plaintiff failed to demand a "bona fide offer" from
3 ConocoPhillips to sell its equipment and improvements at the subject service station to
4 Plaintiff within the time required by the PMPA, and Count I therefore fails to state a claim upon
5 which relief can be granted; and 2) Count II for declaratory relief fails to state a claim upon
6 which relief can be granted as it addresses past conduct, rather than the prospective rights of the
7 parties, and in any event is redundant of, and therefore fails as a matter of law for the same
8 reasons as, Plaintiff's PMPA claim.

9 This motion is based upon this Notice of Motion and Motion, and the Memorandum of
10 Points and Authorities submitted herewith, all orders, pleadings and papers on file in this action,
11 and upon such other matters of which the Court may take judicial notice or which may be
12 presented to the Court at the time of hearing.

13 Dated: December 20, 2007

14 GLYNN & FINLEY, LLP
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18 By 
19 Attorneys for Defendant
20 ConocoPhillips Company
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